

Last month I wrote about the difference in the way we administer consultant design contracts versus construction contracts. This month, I thought it might be helpful to look at the process behind a construction contract award, particularly at “troublespots” in the process, such as how unfair advantage may inadvertently be granted by MDT staff in how they answer questions about an advertised contract, and how we analyze the bids that are submitted. Also, we have several improvements in the pipelines that I’ll provide an update on.

System for asking and answering questions about advertised contracts

We are in the process of implementing an online system that shows questions and answers about specific advertised contracts, allowing every bidder equal opportunity to access the information. The site is expected to be operational by February 2003 and will be managed by our Construction Bureau’s Contract Plans Section.

Until the website is operational, the district construction engineers will remain the primary point of contact for questions about advertised projects. Comments on preliminary plan packages should continue to be directed to staff in Contract Plans.

We believe that having one point of contact through this site will promote uniformity in plan and proposal interpretation (see flowchart). Construction Bureau personnel, already responsible for assembling contract packages and issuing advertisements and addendums, were the logical choice to manage the information flow.

Also, they are most familiar with the design entities contributing to the contract, and therefore most familiar with who can give answers to questions and the legally dictated timeframes associated with providing answers or issuing addendums. Since the system must operate within these time constraints, MDT will be making an effort to ensure the ready availability of timeframes associated with advertisement and the issuance of addendums.

Electronic bidding

MDT is in the process of implementing the electronic distribution of plans, proposals and bid files. On-line bidding will soon be an optional method for submitting bids.

Unbalanced bids

Our Standard Specifications contains the following definitions:

101.80 UNBALANCED BIDS.

A. *Materially Unbalanced.* *A bid that generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Department.*

B. *Mathematically Unbalanced.* *A bid containing lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder’s anticipated profit, overhead costs, and other indirect costs.*

These definitions are taken from federal regulations, specifically 23 CFR §635.102.

By statute, bids must be awarded to the “lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids” (18-4-303, MCA). The Transportation Commission may reject a bid as being “non-responsive” if the bid is found to be unbalanced.

I believe these specifications are clear as to what defines an unbalanced bid. The department has accumulated bid price history for thousands of contracts encompassing billions of dollars worth of work, and uses these price histories to establish the estimated costs for the majority of items in any given contract. Estimated prices for major contract items for all contracts are further refined through the Board of Review process, where individual project characteristics such as material availability, geometric and geographic factors are considered.

When a unit price in the low bid varies significantly from the estimated unit price on a percentage and/or total dollar basis, a review is conducted. This review may be contained within the department if an apparent error in the estimate is easily recognized. The contractor submitting the low bid will be contacted and provided the opportunity to explain their bid for particular items if there is a concern about an unbalanced bid, or if the bid is outside the guidelines for award. If the review leads to concerns about apparent unbalancing within an as-read low bid that could lead to recommendation to reject the bid, the procedure outlined in MDT Management Memo 02-01, issued on April 24, 2002, will be followed.

The Federal Highway Administration’s (FHWA’s) involvement in the process results from another federal regulation, namely 23 CFR §635.114. That section requires that, after opening bids, MDT examine the unit bid prices of the apparent low bid to ensure reasonable conformance with the engineer’s estimate. Extreme variations from the estimate, or obvious unbalancing of unit prices, must be “thoroughly evaluated”. A recommendation by MDT to award or reject a bid with obvious unbalancing has to have a written justification.

A low bid that is mathematically, but not materially, unbalanced may still be awarded. However, if a low bid is found to be both mathematically and materially unbalanced, the FHWA will only concur in a decision to award “with contingency conditions”. That term is not explained, but it is the basis of federal concerns regarding cost participation.

Where a bid is *mathematically* unbalanced (a unit bid price is considerably above or below the reasonable actual cost), we risk dealing with the possibility that the bid may also be *materially* unbalanced. An apparent low bidder with a mathematically unbalanced bid may not turn out to be the actual low bidder if the final quantity for the unbalanced item/s underruns or overruns substantially.

This risk is very real if the other bidders submitted reasonable prices for the item the as-read low bidder unbalanced on. When this can be demonstrated to be the case, the as-read low bid can be said to be materially unbalanced.

When a contractor submits an unbalanced bid that takes advantage of an apparent error in the quantity of the item unbalanced on, he/she is in clear violation of our specifications. Subsection 102.06 reads:

Do not take advantage of an apparent error, omission or ambiguity in the bid package. Upon discovery, immediately notify the Engineer in writing if an error, omission, or ambiguity exists and why it appears erroneous, omitted, or ambiguous.

If we must define the term *reasonable*, as used in the specifications, then we can use statistics to do so. One possible definition might then be:

Reasonable is defined as less than two standard deviations from historical averages. Bidders submitting a unit price for any item that deviates more than two standard deviations from the historical average will be required to submit a written explanation for that item within five calendar days of request from the Department. Failure to submit a satisfactory explanation within that time period will be grounds for a finding of non-responsiveness.

This close scrutiny of all bids could possibly slow the award process, but is possible with the statistical capabilities we now possess. As stewards of taxpayer money, we take the responsibility of awarding contracts very seriously.

Our goal in all of this is awarding contracts that are as accurate as possible. So, in addition to the new online question/answer system and online bidding, we are doing open distribution of preliminary plans and quantities, publicizing proposed letting lists, advertising longer than the legally dictated timeframes and distributing other miscellaneous information electronically.

Given that the process is governed by strict timelines, the sooner we can involve you – our partners in the contracting community – the more likely we are to be successful in achieving that goal.

We welcome your suggestions as we continue working to streamline our business processes. Please submit them online to mdtquestions@state.mt.us or in writing to Dave Galt, PO Box 201001, Helena MT 59620-1001. Sharing your thoughts and ideas is part of staying “on track with MDT”.

David A. Galt
Director



Flowchart for Advertised Projects Guestbook

